

Introduced by Senator Ortiz

February 18, 2004

An act to amend Section 11105 of the Penal Code, and to amend Section 215.5 of the Public Utilities Code, relating to criminal history information.

LEGISLATIVE COUNSEL'S DIGEST

SB 1388, as introduced, Ortiz. Criminal history information.

Existing law requires the Department of Justice to furnish various agencies and entities with a person's state summary criminal history information when that information is used for employment, licensing, or certification purposes, and permits the department to furnish that information, upon a showing of a compelling need, to listed entities, as specified. Among those entities to which the department may provide this information are public utilities, if needed in order to assist in employing current or prospective employees who in the course of their employment may be seeking entrance to private residences.

This bill would permit the department also to provide federal level criminal history information upon the same showing of compelling need when specifically authorized, and would authorize public utilities to receive that information pursuant to specified procedures. It would also expand the authorization for public utilities to receive state and federal criminal history information to permit cable television corporations to receive that information, and would permit that information to be provided concerning current or prospective contract and subcontract employees as well. This authorization would also be expanded to apply to those employees who may be seeking access to adjacent grounds rather than just residences.

Existing law defines cable television corporation for diverse purposes as a corporation or firm that transmits television programs by cable to subscribers for a fee.

This bill would change that definition to a corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11105 of the Penal Code is amended to
2 read:

3 11105. (a) (1) The Department of Justice shall maintain state
4 summary criminal history information.

5 (2) As used in this section:

6 (A) “State summary criminal history information” means the
7 master record of information compiled by the Attorney General
8 pertaining to the identification and criminal history of any person,
9 such as name, date of birth, physical description, fingerprints,
10 photographs, date of arrests, arresting agencies and booking
11 numbers, charges, dispositions, and similar data about the person.

12 (B) “State summary criminal history information” does not
13 refer to records and data compiled by criminal justice agencies
14 other than the Attorney General, nor does it refer to records of
15 complaints to or investigations conducted by, or records of
16 intelligence information or security procedures of, the office of the
17 Attorney General and the Department of Justice.

18 (b) The Attorney General shall furnish state summary criminal
19 history information to any of the following, if needed in the course
20 of their duties, provided that when information is furnished to
21 assist an agency, officer, or official of state or local government,
22 a public utility, or any other entity, in fulfilling employment,
23 certification, or licensing duties, Chapter 1321 of the Statutes of
24 1974 and Section 432.7 of the Labor Code shall apply:

25 (1) The courts of the state.

26 (2) Peace officers of the state as defined in Section 830.1,
27 subdivisions (a) and (e) of Section 830.2, subdivision (a) of



1 Section 830.3, subdivisions (a) and (b) of Section 830.5, and
2 subdivision (a) of Section 830.31.

3 (3) District attorneys of the state.

4 (4) Prosecuting city attorneys of any city within the state.

5 (5) Probation officers of the state.

6 (6) Parole officers of the state.

7 (7) A public defender or attorney of record when representing
8 a person in proceedings upon a petition for a certificate of
9 rehabilitation and pardon pursuant to Section 4852.08.

10 (8) A public defender or attorney of record when representing
11 a person in a criminal case and if authorized access by statutory or
12 decisional law.

13 (9) Any agency, officer, or official of the state if the criminal
14 history information is required to implement a statute or regulation
15 that expressly refers to specific criminal conduct applicable to the
16 subject person of the state summary criminal history information,
17 and contains requirements or exclusions, or both, expressly based
18 upon that specified criminal conduct.

19 (10) Any city or county, or city and county, or district, or any
20 officer, or official thereof if access is needed in order to assist that
21 agency, officer, or official in fulfilling employment, certification,
22 or licensing duties, and if the access is specifically authorized by
23 the city council, board of supervisors, or governing board of the
24 city, county, or district if the criminal history information is
25 required to implement a statute, ordinance, or regulation that
26 expressly refers to specific criminal conduct applicable to the
27 subject person of the state summary criminal history information,
28 and contains requirements or exclusions, or both, expressly based
29 upon that specified criminal conduct.

30 (11) The subject of the state summary criminal history
31 information under procedures established under Article 5
32 (commencing with Section 11120) of Chapter 1 of Title 1 of Part
33 4.

34 (12) Any person or entity when access is expressly authorized
35 by statute if the criminal history information is required to
36 implement a statute or regulation that expressly refers to specific
37 criminal conduct applicable to the subject person of the state
38 summary criminal history information, and contains requirements
39 or exclusions, or both, expressly based upon that specified
40 criminal conduct.

1 (13) Health officers of a city, county, or city and county, or
2 district, when in the performance of their official duties enforcing
3 Section 120175 of the Health and Safety Code.

4 (14) Any managing or supervising correctional officer of a
5 county jail or other county correctional facility.

6 (15) Any humane society, or society for the prevention of
7 cruelty to animals, for the specific purpose of complying with
8 Section 14502 of the Corporations Code for the appointment of
9 level 1 humane officers.

10 (16) Local child support agencies established by Section 17304
11 of the Family Code. When a local child support agency closes a
12 support enforcement case containing summary criminal history
13 information, the agency shall delete or purge from the file and
14 destroy any documents or information concerning or arising from
15 offenses for or of which the parent has been arrested, charged, or
16 convicted, other than for offenses related to the parent's having
17 failed to provide support for minor children, consistent with the
18 requirements of Section 17531 of the Family Code.

19 (17) County child welfare agency personnel who have been
20 delegated the authority of county probation officers to access state
21 summary criminal history information pursuant to Section 272 of
22 the Welfare and Institutions Code for the purposes specified in
23 Section 16504.5 of the Welfare and Institutions Code. Information
24 from criminal history records provided pursuant to this
25 subdivision shall not be used for any purposes other than those
26 specified in this section and Section 16504.5 of the Welfare and
27 Institutions Code. When an agency obtains records obtained both
28 on the basis of name checks and fingerprint checks, final
29 placement decisions shall be based only on the records obtained
30 pursuant to the fingerprint check.

31 (c) The Attorney General may furnish state summary criminal
32 history information *and, when specifically authorized by this*
33 *subdivision, federal level criminal history information* upon a
34 showing of a compelling need to any of the following, provided
35 that when information is furnished to assist an agency, officer, or
36 official of state or local government, a public utility, or any other
37 entity, in fulfilling employment, certification, or licensing duties,
38 Chapter 1321 of the Statutes of 1974 and Section 432.7 of the
39 Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public Utilities Code that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, he or she shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To a peace officer of another country.

(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(6) The courts of the United States, other states, or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or any foreign nation.

(9) (A) Any public utility as defined in Section 216 of the Public Utilities Code, ~~if access~~ *or any cable corporation as defined in Section 215.5 of the Public Utilities Code, if receipt of criminal history information* is needed in order to assist in employing current or prospective employees, *contract employees, or subcontract employees* who, in the course of their employment, may be seeking entrance to private residences *or adjacent grounds*. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

1 Any information obtained from the state summary criminal
2 history is confidential and the receiving public utility *or cable*
3 *television corporation* shall not disclose its contents, other than for
4 the purpose for which it was acquired. The state summary criminal
5 history information in the possession of the public utility *or cable*
6 *television corporation* and all copies made from it shall be
7 destroyed not more than 30 days after employment or promotion
8 or transfer is denied or granted, except for those cases where a
9 current or prospective employee is out on bail or on his or her own
10 recognizance pending trial, in which case the state summary
11 criminal history information and all copies shall be destroyed not
12 more than 30 days after the case is resolved.

13 A violation of this paragraph is a misdemeanor, and shall give
14 the current or prospective employee who is injured by the violation
15 a cause of action against the public utility *or cable television*
16 *corporation's* to recover damages proximately caused by the
17 violations. Any public utility's *or cable television corporation's*
18 request for state summary criminal history information for
19 purposes of employing current or prospective employees who may
20 be seeking entrance to private residences *or adjacent grounds* in
21 the course of their employment shall be deemed a "compelling
22 need" as required to be shown in this subdivision.

23 Nothing in this section shall be construed as imposing any duty
24 upon public utilities *or cable television corporations* to request
25 state summary criminal history information on any current or
26 prospective employees.

27 *(B) Requests for federal level criminal history information*
28 *received by the Department of Justice from entities authorized*
29 *pursuant to subparagraph (A) shall be forwarded to the Federal*
30 *Bureau of Investigation by the Department of Justice. Federal*
31 *level criminal history information received or compiled by the*
32 *Department of Justice may then be disseminated to the entities*
33 *referenced in paragraph (A), as authorized by law.*

34 (10) To any campus of the California State University or the
35 University of California, or any four-year college or university
36 accredited by a regional accreditation organization approved by
37 the United States Department of Education, if needed in
38 conjunction with an application for admission by a convicted felon
39 to any special education program for convicted felons, including,
40 but not limited to, university alternatives and halfway houses.

1 Only conviction information shall be furnished. The college or
2 university may require the convicted felon to be fingerprinted, and
3 any inquiry to the department under this section shall include the
4 convicted felon's fingerprints and any other information specified
5 by the department.

6 (d) Whenever an authorized request for state summary criminal
7 history information pertains to a person whose fingerprints are on
8 file with the Department of Justice and the department has no
9 criminal history of that person, and the information is to be used
10 for employment, licensing, or certification purposes, the
11 fingerprint card accompanying the request for information, if any,
12 may be stamped "no criminal record" and returned to the person
13 or entity making the request.

14 (e) Whenever state summary criminal history information is
15 furnished as the result of an application and is to be used for
16 employment, licensing, or certification purposes, the Department
17 of Justice may charge the person or entity making the request a fee
18 that it determines to be sufficient to reimburse the department for
19 the cost of furnishing the information. In addition, the Department
20 of Justice may add a surcharge to the fee to fund maintenance and
21 improvements to the systems from which the information is
22 obtained. Notwithstanding any other law, any person or entity
23 required to pay a fee to the department for information received
24 under this section may charge the applicant a fee sufficient to
25 reimburse the person or entity for this expense. All moneys
26 received by the department pursuant to this section, Sections
27 11105.3 and 12054 of the Penal Code, and Section 13588 of the
28 Education Code shall be deposited in a special account in the
29 General Fund to be available for expenditure by the department to
30 offset costs incurred pursuant to those sections and for
31 maintenance and improvements to the systems from which the
32 information is obtained upon appropriation by the Legislature.

33 (f) Whenever there is a conflict, the processing of criminal
34 fingerprints and fingerprints of applicants for security guard or
35 alarm agent registrations or firearms qualification permits
36 submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4
37 of the Business and Professions Code shall take priority over the
38 processing of other applicant fingerprints.

1 (g) It is not a violation of this section to disseminate statistical
2 or research information obtained from a record, provided that the
3 identity of the subject of the record is not disclosed.

4 (h) It is not a violation of this section to include information
5 obtained from a record in (1) a transcript or record of a judicial or
6 administrative proceeding or (2) any other public record if the
7 inclusion of the information in the public record is authorized by
8 a court, statute, or decisional law.

9 (i) Notwithstanding any other law, the Department of Justice or
10 any state or local law enforcement agency may require the
11 submission of fingerprints for the purpose of conducting summary
12 criminal history information checks that are authorized by law.

13 (j) The state summary criminal history information shall
14 include any finding of mental incompetence pursuant to Chapter
15 6 (commencing with Section 1367) of Title 10 of Part 2 arising out
16 of a complaint charging a felony offense specified in Section 290.

17 (k) (1) This subdivision shall apply whenever state or federal
18 summary criminal history information is furnished by the
19 Department of Justice as the result of an application by an
20 authorized agency or organization and is to be used for peace
21 officer employment or certification purposes. As used in this
22 subdivision, a peace officer is defined in Chapter 4.5 (commencing
23 with Section 830) of Title 3 of Part 2.

24 (2) Notwithstanding any other provision of law, whenever state
25 summary criminal history information is furnished pursuant to
26 paragraph (1), the Department of Justice shall disseminate the
27 following information:

28 (A) Every conviction rendered against the applicant.

29 (B) Every arrest for an offense for which the applicant is
30 presently awaiting trial, whether the applicant is incarcerated or
31 has been released on bail or on his or her own recognizance
32 pending trial.

33 (C) Every arrest for an offense for which the records of the
34 Department of Justice do not contain a disposition, provided that
35 the Department of Justice first makes a genuine effort to determine
36 the disposition of the arrest.

37 (D) Every detention or successful diversion.

38 (l) (1) This subdivision shall apply whenever state or federal
39 summary criminal history information is furnished by the
40 Department of Justice as the result of an application by a criminal

1 justice agency or organization as defined in Section 13101 of the
2 Penal Code, and the criminal history information is to be used for
3 criminal justice employment, licensing, or certification purposes.

4 (2) Notwithstanding any other provision of law, whenever state
5 summary criminal history information is furnished pursuant to
6 paragraph (1), the Department of Justice shall disseminate the
7 following information:

8 (A) Every conviction rendered against the applicant.

9 (B) Every arrest for an offense for which the applicant is
10 presently awaiting trial, whether the applicant is incarcerated or
11 has been released on bail or on his or her own recognizance
12 pending trial.

13 (C) Every arrest for an offense for which the records of the
14 Department of Justice do not contain a disposition, provided that
15 the Department of Justice first makes a genuine effort to determine
16 the disposition of the arrest.

17 (m) (1) This subdivision shall apply whenever state or federal
18 summary criminal history information is furnished by the
19 Department of Justice as the result of an application by an
20 authorized agency or organization and it is to be used for
21 employment, licensing, or certification purposes pursuant to any
22 of the following sections, or pursuant to any statute that
23 incorporates the criteria of any of these sections by reference:

24 Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and
25 Safety Code.

26 (2) Notwithstanding any other provision of law, whenever state
27 summary criminal history information is furnished pursuant to
28 paragraph (1), the Department of Justice shall disseminate the
29 following information:

30 (A) Every conviction of an offense rendered against the
31 applicant.

32 (B) Every arrest for an offense for which the applicant is
33 presently awaiting trial, whether the applicant is incarcerated or
34 has been released on bail or on his or her own recognizance
35 pending trial.

36 (C) Every arrest for an offense for which the Department of
37 Social Services is required by paragraph (1) of subdivision (a) of
38 Section 1522 of the Health and Safety Code to determine if an
39 applicant has been arrested. However, if the records of the
40 Department of Justice do not contain a disposition for an arrest, the

1 Department of Justice shall first make a genuine effort to
2 determine the disposition of the arrest.

3 (3) Notwithstanding the requirements of the sections
4 referenced in paragraph (1) of this subdivision, the Department of
5 Justice shall not disseminate information about an arrest
6 subsequently deemed a detention or an arrest that resulted in either
7 the successful completion of a diversion program or exoneration.

8 (n) (1) This subdivision shall apply whenever state or federal
9 summary criminal history information is furnished by the
10 Department of Justice as the result of an application by an agency,
11 organization, or individual pursuant to Section 11105.3 or 11105.4
12 of this code, or Section 15660 of the Welfare and Institutions Code
13 and is to be used for employment, licensing, or certification
14 purposes.

15 (2) With the exception of applications submitted by
16 transportation companies authorized pursuant to Section 11105.3,
17 and notwithstanding any other provision of law, whenever state
18 summary criminal history information is furnished pursuant to
19 paragraph (1), the Department of Justice shall disseminate the
20 following information:

21 (A) Every conviction rendered against the applicant for a
22 violation or attempted violation of any offense specified in
23 subdivision (a) of Section 15660 of the Welfare and Institutions
24 Code. However, with the exception of those offenses for which
25 registration is required pursuant to Section 290, the Department of
26 Justice shall not disseminate information pursuant to this
27 subdivision unless the conviction occurred within 10 years of the
28 date of the application or the conviction is over 10 years old but
29 the subject of the request was incarcerated within 10 years of the
30 application.

31 (B) Every arrest for a violation or attempted violation of an
32 offense specified in subdivision (a) of Section 15660 of the
33 Welfare and Institutions Code for which the applicant is presently
34 awaiting trial, whether the applicant is incarcerated or has been
35 released on bail or on his or her own recognizance pending trial.

36 (o) (1) This subdivision shall apply whenever state or federal
37 summary criminal history information is furnished by the
38 Department of Justice as the result of an application by an agency
39 or organization pursuant to Section 777.5 of the Financial Code



1 and is to be used for employment, licensing, or certification
2 purposes.

3 (2) Notwithstanding any other provision of law, whenever state
4 summary criminal history information is furnished pursuant to
5 paragraph (1), the Department of Justice shall disseminate the
6 following information:

7 (A) Every conviction rendered against the applicant for a
8 violation or attempted violation of any offense specified in Section
9 777.5 of the Financial Code.

10 (B) Every arrest for a violation or attempted violation of an
11 offense specified in Section 777.5 of the Financial Code for which
12 the applicant is presently awaiting trial, whether the applicant is
13 incarcerated or has been released on bail or on his or her own
14 recognizance pending trial.

15 (p) (1) This subdivision shall apply whenever state or federal
16 criminal history information is furnished by the Department of
17 Justice as the result of an application by an agency, organization,
18 or individual not defined in subdivision (k), (l), (m), (n), or (o), or
19 by a transportation company authorized pursuant to Section
20 11105.3, and is to be used for employment, licensing, or
21 certification purposes.

22 (2) Notwithstanding any other provisions of law, whenever
23 state summary criminal history information is furnished pursuant
24 to paragraph (1), the Department of Justice shall disseminate the
25 following information:

26 (A) Every conviction rendered against the applicant.

27 (B) Every arrest for an offense for which the applicant is
28 presently awaiting trial, whether the applicant is incarcerated or
29 has been released on bail or on his or her own recognizance
30 pending trial.

31 (q) All agencies, organizations, or individuals defined in
32 subdivisions (k), (l), (m), (n), (o), and (p) may contract with the
33 Department of Justice for subsequent arrest notification pursuant
34 to Section 11105.2. This subdivision shall not supersede sections
35 that mandate an agency, organization, or individual to contract
36 with the Department of Justice for subsequent arrest notification
37 pursuant to Section 11105.2.

38 (r) Nothing in this section shall be construed to mean that the
39 Department of Justice shall cease compliance with any other
40 statutory notification requirements.

1 SEC. 2. Section 215.5 of the Public Utilities Code is amended
2 to read:

3 215.5. “Cable television corporation” shall mean any
4 corporation or firm ~~which~~ *that* transmits *or provides* television
5 ~~programs, computer, or telephone services~~ by cable, *digital, fiber*
6 *optic, satellite, or comparable technology* to subscribers for a fee.

